

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

Date: 04/29/2010

Time: 09:06:00 AM

Dept: 53

Judicial Officer Presiding: Loren E McMaster

Clerk: T. West

Reporter/ERM:

Bailiff/Court Attendant:

Case No: **34-2010-00070005-CU-MC-GDS** Case Init. Date: 02/05/2010

Case Title: **Sacramento County Deputy Sheriffs Association vs. County of Sacramento**

Case Category: Civil - Unlimited

APPEARANCES

Nature of Proceeding: Ruling on Submitted Matter (Order to Show Cause Re: Preliminary Injunction and Temporary Restraining Order) Taken Under Submission 4/16/2010

TENTATIVE RULING

Plaintiffs seek a preliminary injunction enjoining the defendants from applying amendments to Penal Code section 4019, which became effective January 25, 2010, to inmates housed in Sacramento County correctional facilities pending a final judgment on the merits of this case. Plaintiffs claim that the amendments to section 4019, which increased conduct credits for certain persons committed to county jail, are facially unconstitutional under certain provisions of Proposition 9, which became effective November 5, 2008 and modified Article 1, section 28 of the California Constitution ("Marsy's law"). They also claim that the County of Sacramento and the Sheriff of the County of Sacramento are violating the law by calculating conduct credits based on the new provisions for inmates sentenced before January 25, 2010, and that this application of the new law violates Marsy's law.

For the reasons set forth below, it is hereby ordered that plaintiffs' application for preliminary injunction is denied and the order to show cause is discharged.

Both the plaintiffs and the defendants have requested the Court to take judicial notice of various documents. The Court grants these requests, but has considered only those that are relevant to the disposition of the application for preliminary injunction.

In deciding whether to issue a preliminary injunction, a court must weigh two "interrelated" factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance of the injunction. The greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. *Butt v. State of California* (1992) 4 Cal.4th 668, 677-678. A preliminary injunction may not be granted, regardless of the balance of interim harm, unless it is reasonably probable that the moving party will prevail on the merits. *San Francisco Newspaper Printing Co. v. Superior Court* (1985) 170 Cal. App. 3d 438, 442.

Plaintiffs first argue that the amendments to section 4019 are facially unconstitutional on the grounds

that they violate the "Truth in Sentencing" provision of Marsy's law. That provision is set forth in California Constitution, article 1, section 28(f)(5), which provides:

"Truth in Sentencing. Sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce their sentences."

This provision requires that sentences be carried out in compliance with the courts' sentencing orders and that "sentences that are individually imposed" not be substantially diminished by "early release policies." The sheriff's calculation of post-sentence conduct credits pursuant to the amendments to section 4019 does not alter the courts' sentencing orders or sentences that are individually imposed. Otherwise, all statutes that provide for inmates to receive credit for work or conduct would be invalid under Marsy's law. The last sentence of the "Truth in Sentencing" provision makes it clear that this was not the intent of the law. It expressly requires that the legislature ensure sufficient funding to adequately house inmates for the full terms of their sentences, "except for statutorily authorized credits which reduce their sentences." Read in context, which this court must do, the plain language of this provision does not prohibit the legislature from enacting statutes that authorize credits that reduce sentences nor does it prohibit the custodial authorities from applying those statutorily authorized credits when calculating inmates' release dates.

In determining the voters' intent in passing "Marsy's law", this court is required to first look to the words of the provision, giving them their usual and ordinary meaning. *People v. Salazar-Merino* (2001) 89 Cal. App. 4th 590, 596-597. The "plain meaning" rule, however, does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. "The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible." *Lungren v. Deukmejian*, (1988) 45 Cal. 3d 727, 735. If the language is clear and unambiguous there is no need for construction nor is it necessary to resort to indicate of the voters' intent. (*Ibid.*) As the California Supreme Court recently noted. "If the statutory language is unambiguous, we presume the Legislature meant what it said, and the plain meaning of the statute controls. (Citations omitted). We consider extrinsic aids, such as legislative history, only if the statutory language is reasonably subject to multiple interpretations. (Citations omitted). *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal. 4th 32, 45.

Here, the language used is clear and unambiguous.

Plaintiffs contend that the plain language of this provision bars the Legislature from substantially diminishing criminals' sentences to reduce overcrowding. This is not what the provision says. It states that sentences must be carried out in compliance with the courts' sentencing orders and that sentences imposed shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. It does not prevent the Legislature from enacting statutes that alter the punishments for offenses or the calculation of credits. It prohibits "early release policies" that alter courts' sentences. The amendments to section 4019 do not do this.

Plaintiffs have provided the declarations of Todd Spitzer and Steven Ipsen, both of whom participated in the drafting of "Marsy's law," as evidence of the intent of the law. The Court declines to consider these declarations. The opinion of drafters or legislators who sponsor an initiative is not relevant in determining the voters' intent since such opinion does not represent the intent of the electorate. *Robert L. v. Superior Court* (2003) 30 Cal. 4th 894, 904 (citations; quotations omitted).

Plaintiffs request that the Court take judicial notice of various documents including the Voter Information

Guide and the findings and declarations in Proposition 9 itself. Although the Court believes that the language of the "Truth in Sentencing" provision is clear and ambiguous, the Court has considered these materials. However, there is nothing in these documents that suggests that the voters' intended to limit the legislature's power to amend statutory provisions regarding conduct credits.

Plaintiffs next contend that Sacramento County Sheriff's application of the amendments to section 4019 violates victims' rights under Marsy's law to notice and the opportunity to be heard under California Constitution, article 1, section 28(b)(7) and 28(b)(8). Under section 28(b)(7), victims have the right "[t]o reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings." And section 28(b)(8) provides for a state constitutional right of the victim "[t]o be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, postconviction release decision, or any proceeding in which a right of the victim is at issue."

The sheriff's decision to release inmates based on the statutory credit provisions is not a "proceeding." Even if it were, there is no evidence that any victims have requested and been denied notice or to be heard of an inmate's release.

Plaintiffs last argue that the Sheriff of Sacramento is applying the credits retroactively to persons sentenced before January 25, 2010, and that this application violates Senate Bill No. 18 (2990-2010 3d Ex. Sess.), SB 18, which is the bill that amended section 4019, and Marsy's law. According to the declaration of Jeff Rodrigues, a Sheriff's Records Officer II at the Rio Cosumnes Correctional Center, inmates sentenced to county jail before January 25, 2010, receive conduct credits calculated under the previous version of section 4019 for time served prior to January 25, 2010, and credits calculated under the amended version of section 4019 for time in custody on or after January 25, 2010. Although the County of Sacramento asserts that it is not applying the new credit provisions retroactively to time served prior to January 25, 2010, it does not appear to dispute Mr. Rodrigues' explanation of how the provisions are being applied.

As plaintiffs point out, there are two types of retroactivity at issue in the application of the amendments to section 4019. The first is whether the new credit provisions apply to credit for time served in custody prior to the effective date of the new law, January 25, 2010. This type of retroactivity is not at issue in this case. The only evidence before the court is that the Sheriff's department is not applying the new provisions to time served prior to January 25, 2010. The second type of retroactivity is whether the new credit provisions apply to persons who were sentenced prior to January 25, 2010, when calculating the conduct credits on time served on or after January 25, 2010. This appears to be the type of retroactivity being challenged by the plaintiffs.

The issue of the retroactivity of the amendments to section 4019 has not been decided by the California Supreme Court. California appellate courts have addressed whether the new provisions apply retroactively in calculating presentence credits for defendants sentenced prior to January 25, 2010, but whose sentences were not final prior to January 25, 2010. The First, Second, and Third District Courts of Appeal have all held that the new credit provisions apply retroactively in calculating presentence credits for defendants' whose sentences were not final on the effective date of the SBXXX 18. *People v. Brown* (2010) 182 Cal.App.4th 1354; *People v. House* (2010) ___ Cal.App.4th ___; *People v. Landon* (2010) ___ Cal.App.4th ___. These cases rely primarily on the rule set forth in *In re Estrada* (1965) 63 Cal.2d 740, that when a statute has been amended to lessen punishment for an offense and the legislature does not expressly state that it applies prospectively, the reduced penalty applies to any case that is not final on the effective date of the new provision. For purposes of the application of this rule, a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed. *People v. Vieira* (2005) 35 Cal.4th 264, 306. *Brown*, *House*, and *Landon*, all rejected the argument that the *Estrada* rule did not apply to the amendments to section 4019 because a change in the accrual of conduct credits is not a statute lessening punishment.

In *People v. Rodriguez* (2010) ___ Cal.App.4th ___, the Fifth District Court of Appeal held that the new credit provisions did not apply retroactively to defendants sentenced prior to January 25, 2010. It distinguished *Estrada* on the ground that *Estrada* applied to statutes reducing the penalty for specific offenses; whereas, the amendment of section 4019 allowed for increased conduct credits. It concluded based on *In re Stinnette* (1979) 94 Cal.App.3d 800 that the legislative intent in increasing conduct credits is "to increase the incentive for good conduct during presentence confinement." "And 'because it is impossible to influence behavior after it has occurred' (*Stinnette, supra*, 94 Cal.App.3d at p. 806), the amendment cannot act as incentive as to those persons who, like appellant, have completed their presentence confinement prior to the effective date of the amendment."

None of these cases precisely address the retroactivity issue currently before the Court. That is, here the question is whether the increased conduct credits apply to time in custody on or after the effective date of the new provision, not whether it applies to past time in custody. Under either line of cases, this Court cannot conclude that the Sheriff's interpretation is an unlawful application of the new provisions. First, under *Brown, House*, and *Landon*, the new provisions apply to any case not final on the effective date of the new provision, January 25, 2010. Although Jeff Rodrigues' declaration states that the new provisions are being applied to persons sentenced prior to January 25, 2010, in calculating their conduct credits for time on or after this date, there is no evidence before the Court that it is currently being applied to persons whose sentences were final at the highest level of appellate review prior to January 25, 2010. Moreover, if inmates are serving terms as conditions of probation, it is arguable that, since their probation is subject to modification or revocation, their sentences are not final for purposes of applying the new credit provisions. Even if the court were to follow *Rodriguez*, its reasoning supports the sheriff's interpretation of at least applying the increased conduct credits to time served after the effective date of the statute.

Plaintiffs suggest, by incorporation, of previously submitted points and authorities, that the "retroactive" application of the amendments to section 4019 violate Marsy's law "truth in sentencing" provision. For the reasons discussed above, the "truth in sentencing" provision does not prohibit the Legislature from enacting statutes that alter the punishment for crimes or allow for additional credits. This is true even if, under rules of statutory construction, the amendments apply retroactively.

As this Court has stated from the outset of this litigation, the Court does have concerns regarding public safety when county jail inmates are being released early due to the application of increased conduct credits mandated by the Legislature at the same time that Deputy Sheriffs are being laid off. It is a formula for disaster. However, notwithstanding the Court's views on the balance of hardships, the Court cannot rely on such to issue a preliminary injunction unless the party showing the greater hardship establishes a likelihood of prevailing on the merits. *San Francisco Newspaper Printing Co. v. Superior Court*, supra, 170 Cal. App. 3d at 442. The Court cannot find that the plaintiff established such in view of the language of section 4019 discussed above. The Court has a duty to enforce all statutes, including section 4019 as amended, whether or not it agrees with the wisdom of such. The proper forum to further amend section 4019 is in the Legislature.

COURT RULING

The matter was argued and submitted.

The Court takes this matter under submission.

SUBMITTED MATTER RULING

The Court, having taken the above-entitled matter under submission on 04/16/2010 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows: .

The tentative ruling is affirmed with the following additional comments.

Plaintiffs' counsel brought to the Court's attention that the tentative ruling misquoted the "Truth in Sentencing" provision in Marsy's law and argued that this error affected the Court's reasoning in its ruling. Plaintiffs' are correct that the "Truth in Sentencing" provision was misquoted. The last sentence of that provision is: "The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce *those* (not *their*) sentences." This correction does not change the Court's interpretation of the "Truth in Sentencing" provision. This provision when read as a whole, including the corrected version of the last sentence, does not prohibit the legislature from enacting statutes that authorize additional conduct credits nor does it prohibit custodial authorities from applying those credits in calculating inmates' release dates.

Plaintiffs also argued at the hearing that the amendments to section 4019 are barred by the above provision because they reduce the general population in the jail for fiscal reasons. Due to the amendments to section 4019, defendants who are entitled to the additional conduct credits, could serve less time in custody than they would under the previous version of section 4019. And SB 18, the bill that amended section 4019, states that "[t]his act addresses the fiscal emergency declared by the Governor ..." (SB 18, § 62.) However, as stated in the tentative ruling, the plain language in the "Truth in Sentencing" provision of Marsy's law does not prevent the Legislature from enacting statutes that alter the punishments for offenses or the calculation of credits even if the action is motivated by fiscal reasons.

Plaintiffs challenged the Court's conclusion in the tentative ruling that there had not been an adequate showing that the sheriff's "retroactive" application of the new credit provisions was unlawful. Plaintiffs established that the new credit provisions were being applied to time served on or after January 25, 2010, even for defendants sentenced prior to January 25, 2010. (Decl. of Jeff Rodriguez.) They claimed that this was an improper "retroactive" application of the amendments to section 4019. This showing was insufficient to show that the new credit provisions were being unlawfully applied.

The case on which the plaintiffs themselves relied, *People v. Rodriguez* (2010) 182 Cal.App.4th 535, does not support plaintiffs' position. *Rodriguez*, like all of the cases addressing the amendments to date, addressed whether the new conduct credit provisions apply "retroactively" in calculating presentence credits for time already served for defendants whose sentences were not final prior to January 25, 2010. In holding that the legislature did not intend that they apply "retroactively" in this way and that prospective application did not violate equal protection, the court in *Rodriguez* reasoned that, unlike other sentencing provisions, the purpose of the conduct credit provisions is to motivate good conduct and this purpose cannot be accomplished by applying them to time already served. Here, the Sheriff is not applying the credits to time already served. He is applying them only to time yet to be served on or after the effective date of the new statute. Under the reasoning of *Rodriguez*, this appears to be appropriate.

The cases cited by defendants hold, contrary to *Rodriguez*, that the new credit provisions do apply retroactively in calculating presentence credits for defendants whose sentences were not final on or after January 25, 2010. (*People v. Brown* (2010) 182 Cal.App.4th 1354; *People v. House* (2010) 183 Cal.App.4th 1049; *People v. Landon* (2010) ____ Cal.App.4th ____.) These cases simply do not address the application of the new provisions to time served on or after their effective date. Even if these cases could be read to suggest that only defendants whose cases were not final prior to January 25, 2010, are entitled to application of the new credit provisions even on time served on or after January 25, 2010, plaintiffs have not shown that the new credit provisions are currently being applied in this way. Plaintiffs have submitted the declaration of Jeff Rodriguez stating that the new provisions are being applied to persons sentenced prior to January 25, 2010. However, if a defendant was sentenced to county jail time for a misdemeanor on December 24, 2009, which has a 30 day appeal period, or given jail time as a probation condition for a felony on November 24, 2009, which has a 60 day appeal period, these sentences were not final for purposes of appeal prior to January 25, 2010, and the new credit provisions would apply to them under the above cases.

This court also noted in the tentative ruling that it is arguable that, even if an order imposing jail as a condition of probation became final for purposes of appeal prior to January 25, 2010, the sentence might not be considered final for purposes of application of the new credit provisions because probation is subject to modification or revocation during the probation term. At the hearing, plaintiffs cited the case of *People v. Ramirez* (2008) 159 Cal.App.4th 1412, to counter this assertion. *Ramirez* held that an order granting probation or modifying the terms of probation is an appealable order. (*Id.* at p. 1421.) It also held that, where the court imposes a state prison sentence and suspends execution, the court lacks authority to later modify that state prison sentence. (*Id.* at p. 1425.) *Ramirez* did not address whether a judgment granting probation is "final" for purposes of affording a sentenced defendant the benefits of a provision increasing conduct credits during the probation term, which is all the court intended to state. Moreover, this Court's comment was not dispositive of the issue. Even without it, there is an insufficient record before this Court to conclude that the sheriff is violating the law in its application of the new credit provisions to inmates serving time in custody on or after January 25, 2010.

The request for preliminary injunction is denied, and the Order to Show Cause is discharged.

Counsel for Defendant County is directed to prepare the formal order for the Court's signature.

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Declaration of Mailing

I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

Dated: April 29, 2010

T. West, Deputy Clerk s/ T. West

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